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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

XAVIER ZARATE,

Defendant and Appellant.

C087434

(Super. Ct. No. 17FE021098)

Appointed counsel for defendant Xavier Zarate filed an opening brief that sets forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). After reviewing the entire record, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

## **I. BACKGROUND**

On November 10, 2017, defendant drove a car with two codefendants to a Wing Stop restaurant, where his codefendants robbed a restaurant employee by pointing replica handguns at the employee and demanding cash. Defendant then drove himself and codefendants away from the restaurant, absconding with several hundred dollars. Defendant knew that the purpose of this trip was to perpetuate a robbery at the restaurant.

Defendant pleaded no contest to one count of robbery in the second degree and admitted a prior “strike” conviction for robbery in 2015, a serious felony within the meaning of Penal Code section 1192.7, subdivision (c). (Pen. Code, §§ 211, 667, subds. (b)-(i), & 1170.12.) The remaining counts were dismissed with a *Harvey* waiver for purposes of restitution. (*People v. Harvey* (1979) 25 Cal.3d 754.) The trial court sentenced defendant to serve a four-year state prison term: the low term of two years for the robbery count, doubled pursuant to the strike prior. The court imposed various fines and fees, and awarded defendant 239 days of presentence credit, which was subsequently modified to 240 days of credit (209 actual and 31 conduct).

Defendant appeals. He requested but did not obtain a certificate of probable cause.

## **II. DISCUSSION**

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts and procedural history of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of his right to file a supplemental brief within 30 days from the date the opening brief was filed. More than 30 days have elapsed, and defendant has not filed a supplemental brief. Having undertaken an examination of the entire record pursuant to *Wende*, we find no arguable error that would result in a disposition more favorable to defendant.

### III. DISPOSITION

The judgment is affirmed.

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RENNER, J.

We concur:

/S/

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BUTZ, Acting P. J.

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DUARTE, J.